BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **19.07.2021**

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.6245, 6247 and 6249 of 2021
and
W.M.P(MD)Nos.4859, 4860 and 4862 of 2021

M/s.Maheswari Enterprises,
Represented by its Proprietor B.Ranjith
... Petitioner in all W.Ps.

Vs.

The State Tax Officer,
Adjudication Cell - II,
Madurai.
... Respondent in all W.Ps.

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN 33ALNPR7884F2ZG/2017-18, GSTIN 33ALNPR7884F2ZG/2018-19 and GSTIN 33ALNPR7884F2ZG/2019-20 respectively dated 15.10.2020 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondent to pass assessment order afresh after affording an opportunity of personal hearing as contemplated under Section 75(4) of the Tamilnadu Goods and Services Tax Act 2017 within such time as may be directed by this Court.

(In all W.Ps)
For Petitioner : Mr.S.Karunakar

For Respondent : Mr.P.Thilak Kumar
Govt. Advocate

COMMON ORDER

This Writ Petitions have been filed by the petitioner praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN 33ALNPR7884F2ZG/2017-18, GSTIN 33ALNPR7884F2ZG/2018-19 and GSTIN 33ALNPR7884F2ZG/2019-20 respectively dated 15.10.2020 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondent to pass assessment order afresh after affording an opportunity of personal hearing as contemplated under

Section 75(4) of the Tamilnadu Goods and Services Tax Act 2017, within a stipulated time.

2. The brief facts of the case are as follows:-

The petitioner is a distributor for M/s.Vodafone Idea Limited., and dealing with Vodafone Electric Charge(Vodafone EC) and got registered under the GST Act in GSTIN 33ALNPR7884F2ZG. On 06.11.2019, the Department had cancelled the petitioner's registration and therefore, the respondent had issued a notice dated 12.05.2020 stating that after the cancellation of registration, the petitioner had effected business transactions and not filed the returns. Thereafter, the petitioner came to know about the notification issued by the Government with regard to reactivation of registration and therefore, filed an application dated 12.08.2020 before the Department, for revocation of GST registration along with returns and tax payments. Subsequently, the respondent issued a show-cause notice dated 30.09.2020 calling for objection within fifteen days and on receipt of said notice, the petitioner approached his Charted Accountant and had tried to get the records to file a reply before the respondent. However, to the shock and surprise of the petitioner, the respondent has passed the impugned orders on the very last date fixed for submission of reply. Hence, these writ petitions.

3. The learned counsel for the petitioner would state that reasonable opportunity of personal hearing should be given to the petitioner to explain his case as contemplated under Section 75(4) of the TNGST Act, 2017 and therefore, there is a violation of principles of natural justice as such, the impugned orders are liable to be set aside. In support of his submission, the learned counsel for the petitioner would rely on the common judgment of a Division Bench of this Court in G.V.Cotton Mills (P) Ltd., vs. the Assistant Commissioner(CT), Coimbatore (W.A.Nos.234 to 240 of 2015). The relevant portion of the said judgment is extracted hereunder:

> *"DENIAL OF PERSONAL HEARING:*
>
> *10. <u>The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee.</u> In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. We make the position clear that the failure to submit objection to the pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee."*

4. The respondent has filed counter affidavits along with vacate stay petitions and would state that since the petitioner had

not sought for personal hearing, the proposal in the show cause notices was confirmed. He would further state that even as per the provision under Section 75(4) of the TNGST Act, 2017, an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such person. In this case, the petitioner has not sought for personal hearing, as such, there is no violation of the above provision. Further, when the petitioner had not filed reply within 15 days from the date of show cause notice, he had not even made a request for extension of time for filing reply and therefore, the show cause notice was confirmed. Thus, he would state that the ground of violation of principles of natural justice is not established, as such, the impugned orders do not require interference by this Court.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent and perused the materials placed before the Court.

6. It is the specific contention of the learned counsel for the petitioner that the impugned orders have been passed in violation of principles of natural justice as the orders were passed without giving an opportunity of personal hearing as contemplated under Section 75(4) of the TNGST Act, 2017. The learned Government Advocate appearing for the respondent would contend that since the petitioner neither submitted reply within 15 days time nor sought for extension of time and personal hearing as per Section 75(4) of the TNGST Act, the show-cause notices were confirmed vide impugned orders, as such, there is no violation of the principles of natural justice.

7.Admittedly, the petitioner has not filed reply within the time nor sought for personal hearing as per Section 75(4) of the Act. But, equally when the authorities decided to pass adverse orders, then, necessarily personal hearing has to be given as per the judgment in G.V.Cotton Mills (P) Ltd's case (cited supra), but in the present case, no such opportunity of personal hearing has been given to the petitioner and therefore, considering the present facts and circumstances of the case and in the interest of justice, I am inclined to give one more opportunity to the petitioner herein. Accordingly, the impugned orders passed by the respondent in GSTIN 33ALNPR7884F2ZG/2017-18, GSTIN 33ALNPR7884F2ZG/2018-19 and GSTIN 33ALNPR7884F2ZG/2019-20 respectively, dated 15.10.2020, are set aside and the matter is remanded back to the respondent for fresh consideration after giving reasonable opportunity including the personal hearing as contemplated under Section 75(4) of the TNGST Act, 2017 and then pass appropriate orders in accordance with law. Such exercise shall be completed by the respondent, within a period of three months from the date of receipt of a copy of this order. It is needless to say that the petitioner shall co-operate with the respondent.

8.The writ petitions are disposed of with the above directions. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PM

Note:(i) In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer,
Adjudication Cell - II,
Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-23091[F] dated 19/07/2021)

+1 CC to M/s.GP (SR-23292[F] dated 20/07/2021)

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RK (23.08.2021) 4P 4C